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though not apparent on the face of the instrument, and is thereby put on his guard, and therefore becomes subject to the defense of previous redemption. Another possible argument is that a redeemed public security cannot be again redeemable if thereby the lawful limit of indebtedness would be exceeded.¹³ This objection, however, would hardly arise under a constitution which expressly permits securities to be issued for the redemption of "evidence of indebtedness."

Recently in South Carolina, where such a constitutional provision exists,¹⁴ bonds were issued under a statute which provided that the bonds might be exchanged before maturity for certificates, and that redeemed paper was to be recorded, cancelled, and destroyed. It was held by the Supreme Court of South Carolina that the holder in due course of one of these bonds, which had been redeemed and stolen from the treasury before cancellation, could by *mandamus* compel the state treasurer to redeem the bond a second time. *Ehrlich v. Jennings*, 58 S. E. 922. Here the reference to the statute on the face of the bond notified the taker of its redeemability; but he had a right also to infer from the statute that no redeemed bond would escape destruction. The majority of the court adopts the better doctrine that a government security may be valid, though redeemed and unlawfully reissued. In this particular case, however, a contrary result might well have been reached, on the ground that the holder of the bond by bringing *mandamus* under the funding statute, submits to the grace of that statute,¹⁵ and his rights depend not on the law of negotiable instruments, but on the question whether the legislature intended that bonds such as his should be refunded.

ASSUMPSIT TO COLLECT A TAX. — Statutes creating new taxes generally provide a remedy for non-payment by giving the state or collector the right to distrain or sell the property taxed, or by imposing a fine. Where the statute provides no remedy, or the remedy provided is for some reason ineffectual, the question arises whether the state or collector may bring *assumpsit* to collect the tax. The answer depends on the fundamental nature of a tax. Clearly it is not a debt;¹ for it does not arise from any contractual relation, express or implied. Nor has a tax any of the incidents of a debt: it does not draw interest;² is not subject to attachment;³ is not available as a set-off;⁴ cannot be proved in bankruptcy;⁵ and is not assignable.⁶ Similarly a statute doing away with imprisonment for debt does not prevent arrest for failure to pay a tax.⁷ Nor is a tax, even after assessment, a judgment.⁸ "In a very broad sense," said Shaw, C. J., "a tax is a

¹³ *Board v. Sinton*, *supra*.

¹⁴ Const. of 1895, Art. 10, § 7.

¹⁵ *Cf. Sun, etc., Co. v. Board*, 31 La. Ann. 175. See dissenting opinion in *Pugh v. Moore*, *supra*.

¹ *Camden v. Allen*, 26 N. J. L. 398.

² *Shaw v. Peckett*, 26 Vt. 482.

³ *Meriwether v. Garrett*, 102 U. S. 472.

⁴ *Home Savings Bank v. Boston*, 131 Mass. 277.

⁵ *In re Duryee*, 2 Fed. 68.

⁶ *Hinchman v. Morris*, 29 W. Va. 673.

⁷ *Appleton v. Hopkins*, 5 Gray (Mass.) 530.

⁸ *Marye v. Diggs*, 98 Va. 749. But see *State v. Georgia Co.*, 112 N. C. 34; *State v. M. & C. R. R. Co.*, 14 Lea (Tenn.) 56.

debt" because it is a fixed sum due by law, "but technically a tax is not a debt, and should not be so regarded for the purpose of enforcement and collection."⁹ Nevertheless there are some decisions to the effect that where the statute creating the tax provides no method of enforcement, the state or the tax collector may sue in *assumpsit* on non-payment.¹⁰ These cases do not, however, stand on the ground that where there is a right there is a remedy, and that as a tax is a debt *assumpsit* lies, but on the ground of a presumed legislative intent to grant the state a right of action for the enforcement of the tax,¹¹ and an opposite result has been reached when no such intention could be presumed.¹² They are therefore not to be considered as authority for allowing the action under all circumstances.¹³ A tax is an impost of the government, a charge upon certain property of its citizens,¹⁴ for the enforcement of which a special remedy is generally provided, and, aside from the technical difficulties of allowing an action at law in the nature of *assumpsit*, common law principles are against the subjection of taxpayers to the extra expense and harassment of suits at law growing out of burdens already sufficiently troublesome.¹⁵ And accordingly the weight of recent authority seems to be that *assumpsit* ordinarily does not lie.¹⁶

In a recent case the United States brought *indebitatus assumpsit* against a vendor of land, claiming a large sum under the Spanish War Tax, which provided for a fine in case of default. The court held that a tax was not a debt, that the statutory remedy was exclusive, and that the action could not be maintained. *United States v. Chamberlain*, 5 The Law 202 (C. C. A. Eighth Circ.). Although the sovereign is not bound by a statute unless expressly named, and is consequently not restricted to the remedy there given,¹⁷ and can enforce the tax in any proper method, it seems better, both on principle and authority, to confine the action of *assumpsit* to cases where the statute has provided for it expressly, or impliedly in certain cases by giving no remedy at all.

RECENT CASES.

AGENCY — EFFECT OF STATUTES ON RELATION — MASTER'S LIABILITY TO PROVIDE SAFE PLACE TO WORK. — A statute required the employment in every mine of a mining boss whose duty it was, as the miners advanced in their excavations, to see that all loose coal overhead was carefully secured against falling. The plaintiff, one of the defendant's miners, was injured by a fall of coal from the roof of the room in which he was working, owing to the negligent

⁹ *Appleton v. Hopkins*, *supra*, 533.

¹⁰ *Mayor v. Howard*, 6 Har. & J. (Md.) 383.

¹¹ As where the statute provides for the results of an action without expressly giving it. *State v. Snyder*, 139 Mo. 549. Or a previous statute gives it; the remedy then being in existence for one tax can be implied for the enforcement of another. *Dashiell v. Mayor*, 45 Md. 615. See also *Richardson v. Boston*, 148 Mass. 508, 510.

¹² *Louisville Water Co. v. Commonwealth*, 89 Ky. 244.

¹³ *Cf. McKeesport Borough v. Fidler*, 147 Pa. 532; 1 Cooley, Taxation, 1 ed., 13.

¹⁴ *Peirce v. Boston*, 3 Met. (Mass.) 520, 521.

¹⁵ See *State v. Piazza*, 66 Miss. 426, 430.

¹⁶ *McKeesport Borough v. Fidler*, *supra*; *Plymouth County v. Moore*, 114 Ia. 700. But see *State v. Georgia Co.*, *supra*; *City of Anniston v. Southern Ry.*, 112 Ala. 557.

¹⁷ *Savings Bank v. United States*, 19 Wall. (U. S.) 227.